

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

MITCHELL MUSTAINE,

Plaintiff,

Case No. 3:20-cv-504

vs.

MONTGOMERY COUNTY  
BOARD OF COUNTY COMMISSIONERS, *et al.*,

District Judge Michael J. Newman

Defendants.

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**ORDER (1) DENYING AS MOOT DEFENDANT MONTGOMERY COUNTY COURT OF COMMON PLEAS' MOTION TO DISMISS (DOC. NO. 7); (2) DISMISSING DEFENDANT MONTGOMERY COUNTY COURT OF COMMON PLEAS FROM THIS MATTER; AND (3) DENYING AS MOOT DEFENDANT JUDGE RICHARD SKELTON'S MOTION TO DISMISS (DOC. NO. 11)**

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Plaintiff initiated this civil case by filing a complaint, through counsel, raising employment discrimination claims against three Defendants: the Montgomery County Board of Commissioner (the "Board"), the Montgomery County Court of Common Pleas (the "Common Pleas Court"), and Judge Richard Skelton (collectively, "Defendants"). Doc. No. 1. In response, both the Common Pleas Court and Judge Skelton filed motions to dismiss under Fed. R. Civ. P. 12(b). Doc. Nos. 7, 11.

Rather than filing a memorandum in opposition to Defendants' motions to dismiss, Plaintiff filed an amended complaint. Doc. No. 12. Amending a complaint in this situation, without leave of Court, is permitted because Plaintiff filed his amended complaint within 21 days after Defendants served their motions to dismiss. *See* Fed. R. Civ. P. 15(a)(1)(B).

The Board and Judge Skelton each filed an answer to the amended complaint. Doc. Nos. 13, 14.

Plaintiff's amended complaint omits claims against Common Pleas Court. Doc. No. 12. Consequently, the Common Pleas Court is no longer a party to the case, and its motion to dismiss (Doc. No. 7) is moot.

Additionally, the motions to dismiss filed by the Common Pleas Court and Judge Skelton focus on Plaintiff's original complaint. Plaintiff's amended complaint "supersedes" his prior complaint and "nulli[fies]" the motions to dismiss. *See B & H Med., L.L.C. v. ABP Admin., Inc.*, 526 F.3d 257, 267 n.8 (6th Cir. 2008) (quoting *Drake v. City of Detroit*, No. 06-1817, 2008 WL 482283, at \*2 (6th Cir. Feb. 21, 2008)) (stating that a prior "complaint is a nullity, because an amended complaint supersedes all prior complaints"). The Common Pleas Court and Judge Skelton's motions to dismiss are therefore moot.

For the foregoing reasons, the Common Pleas Court and Judge Skelton's motions to dismiss are **DENIED AS MOOT**. Doc. Nos. 7, 11. Judge Skelton may restate his arguments in a motion for judgment on the pleadings. Fed. R. Civ. P. 12(c). The Court anticipates that Plaintiff, Judge Skelton, and the Board will convene and submit a Rule 26(f) report in accordance with the Court's March 25, 2021 Order setting a preliminary pretrial conference. Doc. No. 15.

**IT IS SO ORDERED.**

Date: April 21, 2021

s/Michael J. Newman  
Hon. Michael J. Newman  
United States District Judge